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JAN 17 2007

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

FILED

JAN 18 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

JOHN ARMSTRONG, et al.,

Case No. C 94-2307 CW

Plaintiffs,

v.

INJUNCTION

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

On January 12, 2007, this matter came on regularly for hearing in Courtroom 2, Fourth Floor, of this Court, the Honorable Claudia Wilken presiding. Donald Specter, Sara Norman, Michael Bien, and Gay Grunfeld appeared on behalf of Plaintiffs John Armstrong et al. Katherine Nelson appeared on behalf of Defendants Arnold Schwarzenegger, Governor; James Tilton, Secretary of California Department of Corrections and Rehabilitation ("CDCR"); Kingston W. Prunty, Jr., Undersecretary, CDCR; Scott Kernan, Acting Director, Division of Adult Institutions; Marisela Montes, Chief Deputy Secretary,

1 Adult Programs; George A. Sifuentes, Deputy Director, Office of Facilities Management;
2 and Dr. Peter Farber-Szekrenyi, Director, Division of Correctional Health Care Services
3 (“Defendants”).

4 Having considered the parties’ pleadings and the arguments of counsel, and good
5 cause existing therefor,

6 **THE COURT HEREBY FINDS AND ORDERS:**

7 In a series of orders commencing in 1996 and culminating in 2002, this Court found
8 defendants’ treatment of prisoners with disabilities violates the Americans with Disabilities
9 Act and Section 504 of the Rehabilitation Act. On January 3, 2001, defendants issued the
10 amended Armstrong Remedial Plan, which sets forth their own policies and procedures to
11 bring them into compliance with the ADA and Section 504. On March 21, 2001, this Court
12 issued a Permanent Injunction ordering defendants to comply with the ADA and Section
13 504 in eight specific areas previously litigated by the parties.

14 Commencing in 1999 and continuing to the present, plaintiffs’ counsel have engaged
15 in extensive monitoring of CDCR institutions for compliance with the ADA, Section 504,
16 the Permanent Injunction, and the Armstrong Remedial Plan.

17 This monitoring effort has not yet brought defendants into compliance. While some
18 individual prisons have improved their compliance, it has become increasingly clear that
19 defendants are unable to meet their obligations. This inability to comply with the Court’s
20 Orders and with federal law causes significant harm to the plaintiff class.

21 Through their Motion for Enforcement and Further Remedial Orders, Plaintiffs have
22 demonstrated that defendants continue to violate the rights of prisoners with disabilities
23 under the ADA and Rehabilitation Act in four significant areas.

24 **Inaccessible Housing**

25 Contrary to law, the Permanent Injunction, and the Armstrong Remedial Plan,
26 defendants are systemically failing to provide safe, accessible housing to prisoners with
27 mobility impairments, resulting in significant harm to the plaintiff class, including through
28 increased risk of injury. Defendants lack an adequate number of wheelchair accessible

1 placements, toilets and showers to accommodate the needs of prisoners with mobility
2 impairments who need to use a wheelchair either full-time or part-time. This shortage is
3 particularly acute for prisoners with special housing needs such as protective custody,
4 enhanced mental health care, administrative segregation, or high security levels.

5 Defendants also repeatedly fail to place prisoners with serious mobility and vision
6 impairments in safe housing. Defendants often force prisoners into upper bunks or upper
7 tiers of the prison despite restrictions from medical staff on such placements.

8 Defendants fail to transfer prisoners with severe disabilities to prisons designed to
9 accommodate them in a timely fashion. As a result, such prisoners are denied needed
10 accommodations too often and for too long.

11 Defendants have failed to repair and maintain accessible showers and toilets in many
12 prisons, especially California Institution for Men, San Quentin, and Kern Valley.

13 **Denial of sign language interpreters to prisoners who need them**

14 Contrary to law and the Armstrong Remedial Plan, defendants consistently and
15 systemically deny sign language interpreters to deaf prisoners. Within designated prisons,
16 the violations occur most frequently at deaf prisoner's medical and mental health
17 appointments. Plaintiffs have also presented pervasive evidence of violations with regard to
18 suicidal prisoners; in education, work, and other programming; and during classification
19 hearings, harming deaf signers by forcing them to rely on ineffective and inadequate forms
20 of communication such as lip reading and written notes. As such, deaf signers are unable to
21 understand or comprehend significant due process proceedings and medical care provided to
22 them.

23 **Confiscation of Medically Prescribed Assistive Devices**

24 Contrary to law and the Armstrong Remedial Plan, defendants routinely and
25 systemically remove assistive devices such as walking canes, hearing aids, tapping canes,
26 crutches, and wheelchairs from prisoners without any security justification and without
27 consulting medical staff. The problem is severe and longstanding. Removal of assistive
28 devices has been adopted as a policy at some institutions, while at others it is tolerated and

continues sporadically, making it difficult or impossible for prisoners to ambulate or hear in prison and putting them at significant risk of injury.

Late and Inadequate Disability Grievance Responses

Contrary to law and the Armstrong Remedial Plan, defendants repeatedly and systemically fail to respond promptly to class members' grievances requesting accommodations. Some institutions respond chronically late – as often as 70 to 90 percent of the time – to disability grievances, thereby subjecting class members to extraordinarily long waits for hearing aids and other accommodations. Some institutions simply stop processing grievances or lack any staff person (medical appeals analyst) to process disability grievances or fail to retrieve the grievances from the box where prisoners are instructed to leave them. Through whichever failed mechanism, CDCR's inadequate disability grievance system harms the plaintiff class by denying them their only means of seeking accommodation for their disabilities.

Inadequate Disability Tracking

Underlying all of these violations is defendants' failure to adequately track prisoners' disabilities and the accommodations they need. As this Court held on May 30, 2006, "[t]he current system for tracking prisoner ... disabilities is unreliable, noncomprehensive, and insufficient." This Court further stated that "[u]se of a tracking system to prevent such violations is required ... by the underlying law." Defendants' Armstrong and Clark Automated Tracking System has failed to identify and track CDCR prisoners' disabilities and the accommodations needed for those disabilities. The lack of an adequate tracking system has resulted in significant harm to the plaintiff class, including but not limited to denial of safe, accessible housing, prompt transfers to designated institutions, and sign language interpretation.

IT IS HEREBY ORDERED that defendants, their agents, employees and successors in interest shall take the actions listed below, and use all means at their disposal to comply with the provisions set forth below, including obtaining staffing and funding on an emergency basis, if necessary. If defendants believe that any provision in state law

1 makes compliance with any provision impossible, they shall immediately thereafter notify
2 the Court and set forth their position about whether such law should be waived pursuant to
3 18 U.S.C. Section 3626(a)(1)(B).

4 The parties shall meet and confer as often as necessary to fulfill the provisions of this
5 order and obtain as much agreement as possible on the means to achieve compliance
6 therewith. The parties shall notify the Court in writing of any disputes about the
7 implementation of these provisions and suggest appropriate methods of resolution.

8 The Court shall schedule periodic status conferences at 60 day intervals to monitor
9 the progress of compliance with this and other prior orders. Prior to such conferences, the
10 parties shall file statements in a form to be determined through agreement of the parties
11 describing defendants' progress on each issue, any perceived barriers to future compliance
12 and suggested methods of overcoming those barriers.

13 **A. ENHANCED STAFFING**

14 Within 45 days of the date of this Order, defendants shall increase the staff of the
15 CDCR Court Compliance Team so that it has at least one staff member at Correctional
16 Counselor II level or higher for each prison designated to house prisoners with disabilities
17 impacting placement (including designated reception centers and designated Security
18 Housing Unit and condemned housing) and at least one position at Correctional Counselor
19 II or higher position for every two non-designated prisons.

20 The Court Compliance Team shall have sufficient command authority within the
21 CDCR to direct compliance with the Armstrong Remedial Plan and the orders of this Court
22 at all CDCR institutions.

23 Within 45 days of the date of this Order, defendants shall appoint one full-time staff
24 member at the Associate Warden level or higher as the ADA Coordinator at each institution
25 designated to house prisoners with disabilities impacting placement (including designated
26 reception centers and designated Security Housing Unit and condemned housing), to work
27 only on ADA compliance matters, with a supervising correctional counselor as an assistant.

28 \\\

1 **B. TRACKING SYSTEM**

2 Defendants shall develop, implement, and begin to use a state-wide, computerized,
3 networked real-time tracking system to track prisoners with disabilities by May 30, 2007.
4 This system shall be integrated with the BPH tracking system previously ordered by the
5 Court. The tracking system shall include prisoners' disability designations and the
6 disability accommodations they require, including but not limited to lower bunks, ground
7 floor housing, assistive devices, and effective communication needs such as sign language
8 interpreters, large print, and scribes.

9 For prisoners whose disabilities impact placement (DPW, DPO, DPM, DPV, and
10 DPH), as well as for prisoners who are DNM with housing restrictions, the tracking system
11 shall include placement and classification factors, including but not limited to mental health
12 placement needs, protective custody, administrative segregation, Security Housing Unit,
13 security level, and developmental disability designation.

14 The tracking system shall be updated continuously as new information is received
15 about prisoners with disabilities.

16 **C. HOUSING**

17 Within 90 days of the date of this Order, defendants shall generate an inventory of
18 housing placements available to DPV, DPW, DPM, and DPO prisoners and DNM prisoners
19 with housing restrictions. The inventory must include classification factors for each
20 placement, including but not limited to mental health placement needs, protective custody,
21 administrative segregation, Security Housing Unit, security level, and developmental
22 disability designation. The inventory must also include information regarding the current
23 state of repair of accessible features for each placement.

24 The placement inventory shall be updated continuously as new information is
25 received regarding placement factors and maintenance.

26 Upon completion of the inventory, CDCR may no longer house DPW, DPO, and
27 DPM prisoners at any placements without adequate accessible housing, including working
28 accessible toilets and showers.

1 Starting immediately, defendants shall not house DPW, DPO, and DPM prisoners in
2 the CIM dayrooms or Kern Valley State Prison until those locations have adequate
3 accessible housing, including working accessible toilets and showers.

4 **D. ACCOUNTABILITY**

5 Within 120 days of the date of this Order, defendants, in cooperation with the Office
6 of the Inspector General and the Receiver in *Plata v. Schwarzenegger*, shall develop a
7 system for holding wardens and prison medical administrators accountable for compliance
8 with the Armstrong Remedial Plan and the orders of this Court. This system shall track the
9 record of each institution and the conduct of individual staff members who are not
10 complying with these requirements. Defendants shall refer individuals with repeated
11 instances of non-compliance to the Office of Internal Affairs for investigation and
12 discipline, if appropriate.

13 Within 60 days of the date of this Order, defendants, in consultation with plaintiffs'
14 counsel, shall develop and implement a system of positive incentives to encourage
15 individual employees and managers at the institutions to comply with the Armstrong
16 Remedial Plan and the Orders of this Court.

17 Within 60 days of the date of this Order, defendants shall amend post orders and duty
18 statements of correctional staff as appropriate to include the *Armstrong* requirements for
19 which they are responsible.

20 **E. TRAINING**

21 Within 60 days of the date of this Order, defendants, subject to the approval of
22 plaintiffs' counsel, shall select and retain outside experts to provide training of health care
23 staff and correctional counselors in effective communication issues.

24 Within 60 days of the date of this Order, the parties shall jointly agree on outside
25 experts and defendants shall retain them to provide training to all custody staff who work in
26 administrative segregation units, the Security Housing Unit, or Receiving and Release on
27 their obligations not to confiscate assistive devices and the reasons therefor.
28

1 Defendants' employees may jointly provide training with the outside experts. The
2 training of all appropriate staff shall be completed by September 1, 2007, and a regular
3 schedule of ongoing and refresher training shall be established.

4 **F. GRIEVANCES**

5 Within 30 days of the date of this Order, defendants shall ensure that the Appeals
6 Coordinator and Medical Appeals Analyst positions are filled at each institution.
7 Defendants shall take all actions necessary to ensure that these positions do not remain
8 vacant for more than one month.

9 Within 60 days of the date of this Order, defendants shall provide sufficient
10 additional staff time to timely process grievances whenever a prison's disability grievance
11 responses are late more than 30% of the time within the last six months. The additional
12 staffing shall remain in place until the grievance process is in substantial compliance. The
13 parties shall meet and confer as soon as possible to establish an appropriate methodology to
14 determine how to measure the timeliness of grievance responses and the definition of
15 substantial compliance in this area, with any disputes to be resolved by the Court.

16 **G. SIGN LANGUAGE INTERPRETERS**

17 Within 120 days of the date of this Order, defendants shall establish as permanent
18 civil service positions qualified sign language interpreters for each prison designated to
19 house prisoners whose hearing disabilities impact their placement (DPH). Defendants shall
20 employ, through whatever salary is necessary, sufficient qualified interpreters to serve the
21 needs of the DPH prisoners housed at each institution. Defendants may seek relief from this
22 provision at a particular institution when their video conferencing facilities are sufficient to
23 provide all necessary sign language services at that institution.

24 Within 30 days of the date of this Order, defendants shall conduct interviews of all
25 DPH inmates in reception centers by a correctional counselor in the presence of a qualified
26 sign language interpreter to determine the prisoner's preferred method of communication
27 and record that information in the state-wide tracking system as well as the prisoner's
28

1 central and medical files. Defendants shall conduct such interviews with prisoners who are
2 newly designated DPH within 30 days of the designation.

3 **H. MISCELLANEOUS**

4 Defendants shall comply with the policies and procedures contained in their
5 *Armstrong* Remedial Plan relevant to the issues outlined above, specifically Sections I (p.1),
6 II.A-D (pp. 1-4), II.E (pp. 4-7), II.F (p. 7), IV.C-G (pp. 16-21), IV.I.22 (pp. 34-35), and
7 IV.I.23 (pp. 36-41) of the Remedial Plan.

8 The Court finds that the relief ordered herein is narrowly drawn, extends no further
9 than necessary to correct the violation of federal rights, and is the least intrusive means
10 necessary to correct the violation of the federal rights.

11 **IT IS SO ORDERED.**

12
13 Dated: JAN 18 2007

By:


THE HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ARMSTRONG, ET AL,
Plaintiff,

Case Number: CV94-02307 CW

CERTIFICATE OF SERVICE

v.

DAVIS, ET AL et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 18, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: January 18, 2007

Richard W. Wicking, Clerk
By: Sheilah Cahill, Deputy Clerk